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CARLSON, GASKEY & OLDS, P.C.			EXAMINER	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/644,354

Filing Date: August 20, 2003

Appellant(s): PHILPOTT, DANIEL J.

Kerrie A. Laba
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 17, 2007 appealing from the Office action mailed April 9, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 24-33 and 35-44 appears on pages 15-18 of the Appendix to the appellant's brief. The minor errors are as follows: It appears that claim 43 has been inadvertently numbered as claim 42.

(8) Evidence Relied Upon

5,699,880

Hockley

12-1997

H2026H

White et al.

6-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-27, 32, 33, 35-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Hockley.

In re claims 24, 27, 32-33 and 36-37, Hockley provides a housing portion (30) comprising a first component adapted to be attached to a vehicle structure (22); an overstroke sensor (32, 34); an operating shaft (18) that actuates a brake mechanism rotating about a pivot axis relative to the housing portion; and the operating shaft cooperates with the overstroke sensor to identify an overstroke condition.

Re claims 25-26, please note that element (30) can be considered a housing portion because it overlays member 18. Note element 30 does not rotate.

Re claim 35, 39, please note that sensor members (32, 34) is mounted through the housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-31 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hockley in view of White et al.

In re claim 28-31 and 40, Hockley et al lacks the teaching of generating a signal supplied to a controller. Please note that element 36 can be considered a tab portion. White et al teaches an overstroke sensor or switch (57) that generates a signal that is communicated to a controller (61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the sensor of Hockley et al with a signal sent to a controller as taught by White et al merely to prevent the need for manual inspection of the indicator.

Allowable Subject Matter

Claims 38 and 41-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Applicant argues that Hockley does not teach wherein the "overstroke sensor is mounted to a housing portion" as is claimed. The examiner maintains that in Hockley, the overstroke

sensor is interpreted as elements 32 and 34 and that the "housing portion" is interpreted as element 30 which is connected to housing portion 14. Applicant argues that element 30 cannot be considered a "housing portion". The examiner disagrees with Applicant's interpretation and maintains that a "housing portion" is a broad term and has been interpreted reasonably in the instant rejection.

Applicant further argues that Hockley's overstroke sensor is an indicator and not a sensor. However, through out Applicant's specification, the instant invention is also referred to interchangeably as an indicator. See for example, paragraphs 27 and 28. Additionally, Applicant's invention refers to providing a visual indication to an operator or mechanic. (Figures 7, 8, Paragraph 34) Therefore, Hockley is a sensor to the same extent as Applicant's invention.

Re claim 33, Applicant argues that the indicator of Hockley is not movable. In Figure 4 of Hockley, the plate 52 is clearly movable within the slot of bracket 30 as indicated by the arrows.

Re claim 35, since element 30 of Hockley has been interpreted as the housing wall, it is clear in Figure 1 of Hockley that the indicator elements 32, 34 extend through the housing wall.

Re claims 28 and 40 Applicant argues that it would not be obvious to provide a signal to a controller as taught by White et al. rather than the visual indication taught by Hockley. The examiner disagrees and maintains that providing electronic indication rather than mechanical indication is extremely well known in the art and would have been an obvious modification to one skilled in the art.

Similarly, re claim 29 applicant argues that it would not be obvious to use a switch as taught by White et al. rather than the visual indication taught by Hockley. Again, providing electronic indication rather than mechanical indication is well known to those skilled in the art and would have been obvious.

Re claim 30, Applicant argues that White does not teach that a distal end of the shaft contacts the switch. In Figures 3 and 4 of White, the Examiner feels that it is reasonable to interpret the configuration such that the distal end of the shaft 36 contacts the switch 59.

Re claim 31, Applicant argues a specific modification. However, it is the Examiner's position that one of ordinary skill in the art would be able to reasonably make a modification such that a sensor is mounted to the housing portion and that the indicator 36 is capable of being the claimed "tab".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MT

Conferees:

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